No. 86-1985

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RICHARD B. FREED, ET UX.,

Appellants,

v.

WORCESTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

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QUESTION PRESENTED

The question presented by this motion to dismiss or affirm is whether parents seeking the identity of the reporter of a child neglect complaint against them are entitled to review in this Court under 28 U.S.C. §1257 of a state court judgment denying disclosure, where:

a) the parents failed in state court to draw in question the validity of Maryland statutes on the ground of their being repugnant to the Constitution; and

b) the parents fail to present a substantial federal question.

PARTIES TO PROCEEDING BELOW

The parties have remained the same since the filing of this action in the Circuit Court for Worcester County (Maryland). Plaintiffs/Appellants are Richard B. and Paula Freed. Defendants/Appellees are Worcester County Department of Social Services, the State of Maryland, Baine Yates, Tom Weimer and Nancy Lynch.

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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16.1, appellees Worcester County Department of Social Services (hereinafter "WCDSS"), et al, move to dismiss the appeal herein, or in the alternative, to affirm the

decision of the Court of Appeals of Maryland. The grounds for the motion are that appellants failed in state court to draw in question the validity of Maryland statutes on the ground of their being repugnant to the Constitution; and that appellants fail to present a substantial federal question. Therefore, appellants are not entitled to review by this court, either by appeal or by writ of certiorari under 28 U.S.C. §1257.

STATE STATUTES INVOLVED

This appeal raises the question of the constitutionality of Maryland statutes and regulations providing for the confidentiality of records of child abuse or neglect and their disclosure under certain circumstances, see Art. 88A §§6(b) and (d), Ann. Code of Md.; provisions granting good faith immunity to persons making reports of child neglect, see Md. Code Ann. Fam. Law Art. §§5-702(2), 5-708; and provisions restricting the disclosure of lay reporters to the reported family, see Md. Code Ann. Fam. Law Art., §5-707, and Code of Maryland Regulations (COMAR) .07.02.07.06E.

STATEMENT OF THE CASE

In August, 1983, WCDSS, a local department of social services, received a report of suspected child neglect involving children of Appellants Richard

and Paula Freed. After interviews with members of the Freed family, WCDSS ruled out child neglect. The Freeds demanded that Appellees disclose the name of the person making the neglect report. Appellees refused to identify the complainant.

The Freeds then filed a two count complaint against WCDSS, the State of Maryland and the three WCDSS employees who investigated the neglect report but did not disclose the name of the reporter. Appellants did not allege that any of the state officials acted in bad faith or contrary to existing law. Nevertheless, the Freeds sought a writ of mandamus to compel Appellees to disclose the complainant and damages and injunctive relief under the Civil Rights Act, 42 U.S.C. §1983, for alleged violations of rights under the Fourteenth Amendment to the United States Constitution. The

complaint did not seek declaratory or injunctive relief voiding the Maryland statutes and regulations limiting disclosure as being repugnant to the United States Constitution.

On March 5, 1986, Circuit Court for Worcester County, Maryland dismissed the Freeds' complaint. After noting an appeal to the Court of Special Appeals of Maryland, the Freeds filed a petition for writ of certiorari to the Court of Appeals of Maryland, which denied the writ on May 21, 1986. On December 8, 1986, the Court of Special Appeals issued a reported opinion affirming the dismissal of the Freeds' complaint. Freed v. Worcester County Department of Social Services, 69 Md. App. 447, 518 A.2d 159 (1986). On January 2, 1987, the Freeds filed a second petition for writ of certiorari with the Court of Appeals, which was denied on March 23, 1987.

ARGUMENT

I. Appellants Have No Right To Appeal Because They Have Not Drawn In Question The Validity Of Maryland Statutes In State Court Proceedings Below.

In its written opinion affirming the dismissal of the Freeds' action the Court of Special Appeals of Maryland summarized the relief sought in their complaint: a writ of mandamus to compel disclosure of the reporter of child neglect; money damages under 42 U.S.C. §1983; and an injunction under §1983 ordering disclosure of the source of the report in this case and in other cases where neglect is ruled out. Jurisdictional Statement(J.S.), at 9a-10a. Because Appellants failed to make a timely and explicit demand that Maryland statutes, as applied to them, should be voided, no right to appeal exists here. See Charleston Federal Savings & Loan Assn. v. Alderson, 324 U.S. 182, 185 (1945). 1/

In both the trial court and the Court of Special Appeals, appellants argued that they were entitled to disclosure of the identity of the complainant under Maryland law and the United States Constitution. Instead of explicitly challenging Maryland statutes, appellants claimed rights under the Fourteenth Amendment which purportedly limit the discretion of state employees to deny disclosure. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 562 n. 4 (1979), citing cf. Phillips v. United States, 312 U.S. 246, 252 (1941) ("[A]n attack on lawless authority in a particular case is not an attack on the constitutionality of the statute

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1/ Appellants claim a right of review in this Court either by appeal or by certiorari. Appellants are entitled to have their Jurisdictional Statement considered as a petition for writ of certiorari if no appeal lies. This argument shows why appellants have no right to appeal; Argument II demonstrates why the Court should dismiss the petition for writ of certiorari, or in the alternative, affirm the judgment of the Court of Appeals of Maryland.

conferring the authority . . .") Given the nature of appellants' claims for relief, this Court lacks appellate jurisdiction.

For an appeal to lie under 28 U.S.C. §1257(2), a state court must sustain a statute and hold it applicable to a particular set of facts as against the contention that such application is invalid on federal grounds. Japan Line v. County of Los Angeles, 441 U.S. 434, 440-1 (1979). But where, as here, the objection in the state court was not "that the statute was invalid as applied, but rather that the effect of the state court's exercise jurisdiction in the circumstances" deprived the litigant of constitutional rights, no right to appeal exists. Hansen v. Denckla, 357 U.S. 235, 244 (1958).

In their Jurisdictional Statement appellants seek, for the first time, a

declaration that numerous state statutes and regulations are unconstitutional. J.S. at 16-17. See State Statutes Involved, supra. Because appellants did not challenge these provisions in state court, they may not do so on appeal. Cardinale v. Louisiana, 394 U.S. 437, 439 (1969).

Appellants have failed to make an explicit and timely attack on the statutes they now challenge and, therefore, have no right to appeal to this Court.

II. This Court Should Dismiss The Petition For Writ Of Certiorai, Or In The Alternative, Affirm The Judgment Below Because Appellants Fail To Present A Substantial Federal Question.

Assuming that the Court decides to treat the Jurisdictional Statement as a petition for writ of certiorari, no compelling reason exists why this Court should grant such a petition under 28 U.S.C. §1257(3). Appellants fail to cite a single authority under the Civil Rights

Act granting disclosure of a child neglect reporter, allowing a damage claim or declaring state statutes unconstitutional. No such authorities exist; and no substantial federal question is presented by the facts of this case. The decision of the Maryland courts is so obviously correct that further review is unwarranted.

Without citing a single authority, the Freeds claim that refusal of the disclosure sought in this lawsuit denied them their right to sue the informant and, consequently, various constitutional rights. See J.S. at 21-30. At the same time, the complaint alleges that the neglect report was made by Mrs. Freed's former spouse. J.S. at 42a-43a. The Court of Special Appeals held that the legal action by the Freeds is not impossible. Therefore, there is no actual encroachment of their right of access to

the courts. J.S. at 16a-17a. The Freeds need no relief from this or any other court in order to file an immediate action against the individual allegedly making the bad faith report against them.

No timely or significant issues are presented by this petition. Contrary to Appellants' suggestion, this is not a case where social workers interviewed ". . . friends, relatives, and neighbors, as well as school teachers, day care personnel, doctors, clergymen and others who know the family." J.S. at 16, quoting Besharov, D.J., "Unfounded Allegations - A New Child Abuse Problem," The Public Interest, No. 83, Spring 1986, pp 18-33. The complaint simply alleges that WCDSS employees demanded to speak to the Freed children J.S. at 39a. No allegations were made that persons outside the family were contacted. If embarrassment and damage to a family's reputation from an

investigation of unfounded child neglect is the important societal issue Appellants seek to present to this Court, no facts in the complaint have raised this issue. 2/

Appellants fail to show why they are entitled to maintain this action under 42 U.S.C. §1983. Neither Maryland law nor the Civil Rights Act entitles them to the disclosure they seek here. Rejecting the Freeds' state law count for mandamus, the Court of Special Appeals of Maryland determined that ". . . there is neither 'imperative' duty on the part of social services (to disclose the complainant) nor the 'clear legal right' in the Freeds." 3/

2/ Nor is this a case which should be reversed because the judgment below will have an impact on the validity of similar statutes in other states. Appellants make no such claim.

3/ The Court of Special Appeals' affirmance of the dismissal of the mandamus count is fully supported by adequate and independent state grounds. See Michigan v. Long, 463 U.S. 1032, 1038 (1983). No federal questions were raised by Appellants in this claim. Therefore, on this basis alone, Appellants are not entitled to review of their mandamus claim.

J.S. at 11a. Moreover, the court below found that the purpose behind the nondisclosure law is to encourage the reporting of child neglect cases. J.S. at 14a.

Just last term, this Court recognized the importance of state confidentiality statutes in furthering this goal in Pennsylvania v. Ritchie, ____ U.S. ____, 107 S.Ct. 989, 1003-4 (1987):

> Relatives and neghbors who suspect abuse . . . will be more willing to come forward if they know that their identities will be protected. Recognizing this, the Commonwealth-like all other states-has made a commendable effort to assure victims and witnesses that they may speak to C(hildren) Y(outh) S(ervices) counselors without fear of general disclosure. The Commonwealth's purpose would be frustrated if this confidential material had to be disclosed upon demand to a defendant charged with criminal child abuse, simply because a trial court may not recognize exculpatory evidence.

This Court's refusal to divulge the contents of a protective services record to a criminal defendant applies with greater force to Appellants, who have a far less compelling need for the

confidential information. Appellants present no novel legal or factual isues justifying this Court's reconsideration of the confidentiality of these records.

CONCLUSION

For the reasons stated, the Freeds are not entitled to review in this Court, either by appeal under 28 U.S.C. §1257(2), or by petition for writ certiorari under 28 U.S.C. §1257(3). Therefore, appellees respectfully move the Court to dismiss this appeal, or in the alternative, to affirm the judgment of the Court of Appeals of Maryland.

Respectfully Submitted,

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